

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, October 26, 2005, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Gene Carroll, Dick Esseks, Gerry Krieser, Roger Larson, Melinda Pearson, Lynn Sunderman and Tommy Taylor (Mary Strand absent); Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Brian Will, Greg Czaplewski, Tom Cajka, Joe Rexwinkle, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Jon Carlson called the meeting to order and requested a motion approving the minutes for the regular meeting held October 12, 2005. The Clerk made a correction to page 6 on the action on Four Stones, County Final Plat No. 05097. Motion for approval, as corrected, made by Carroll, seconded by Krieser and carried 7-0: Carlson, Carroll, Esseks, Krieser, Larson, Pearson and Sunderman voting 'yes'; Strand and Taylor absent.

### **CONSENT AGENDA**

### **PUBLIC HEARING & ADMINISTRATIVE ACTION**

### **BEFORE PLANNING COMMISSION:**

October 26, 2005

Members present: Carlson, Carroll, Esseks, Krieser, Larson, Pearson, Sunderman and Taylor; Strand absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 05073, CHANGE OF ZONE NO. 05072 and SPECIAL PERMIT NO. 1883A**, an amendment to the **STEVENS CREEK POINTE COMMUNITY UNIT PLAN**.

Ex Parte Communications: None.

**Item No. 1.2a, Change of Zone No. 05072, and Item No. 1.2b, Special Permit No. 1883A**, were removed from the Consent Agenda and scheduled for separate public hearing.

Carroll moved to approve the remaining Consent Agenda, seconded by Pearson and carried 8-0: Carlson, Carroll, Esseks, Krieser, Larson, Pearson, Sunderman and Taylor voting 'yes'; Strand absent.

**CHANGE OF ZONE NO. 05072**  
**TEXT AMENDMENT TO TITLE 27**  
**TO ALLOW PRE-EXISTING BUILDABLE LOTS**  
**TO BE INCLUDED WITHIN THE LIMITS OF A**  
**COMMUNITY UNIT PLAN AND NOT AFFECT THE**  
**OVERALL DENSITY**  
**and**  
**SPECIAL PERMIT NO. 1883A,**  
**AMENDMENT TO THE STEVENS CREEK POINTE**  
**COMMUNITY UNIT PLAN TO ADD TWO LOTS,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT NORTH 134<sup>TH</sup> STREET AND ADAMS STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 26, 2005

Members present: Pearson, Carroll, Sunderman, Taylor, Esseks, Larson and Carlson; Krieser declaring a conflict of interest; Strand absent.

Staff recommendation: Approval of the text amendment and conditional approval of the amendment to the community unit plan.

Ex Parte Communications: None.

These applications were removed from the Consent Agenda due to letter received in opposition to the amendment to the community unit plan.

Additional information submitted for the record: Mike DeKalb of Planning staff submitted an e-mail from Bruce Anderson in opposition, with concerns about the density; adjacency to commercial grazing lands, increasing risk of undesirable interactions between human occupancy and livestock; proximity to creeks; and water issues.

Proponents

1. **Jill Sherman** appeared on behalf of **Brian D. Carstens and Associates** and on behalf of the applicant and owners of the property, **Gerry and Dianne Krieser**. As the CUP exists today, the boundary does not include this area proposed to be added. There are two existing I.T. lots upon which two units could be built and take access to Adams Street. This proposal relinquishes the two accesses on Adams Street and moves them up into the current subdivision. The two existing dwellings on Adams are already gone.

There was no testimony in opposition.

**CHANGE OF ZONE NO. 05072**

**ACTION BY PLANNING COMMISSION:**

October 26, 2005

Larson moved approval seconded by Carroll and carried 7-0: Pearson, Carroll, Sunderman, Taylor, Esseks, Larson and Carlson voting 'yes'; Krieser declaring a conflict of interest; Strand absent. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 1883A,**

**AN AMENDMENT TO THE STEVENS CREEK POINTE COMMUNITY UNIT PLAN**

**ACTION BY PLANNING COMMISSION:**

October 26, 2005

Carroll moved to approve the staff recommendation of conditional approval, seconded by Larson and carried 7-0: Pearson, Carroll, Sunderman, Taylor, Esseks, Larson and Carlson voting 'yes'; Krieser declaring a conflict of interest; Strand absent. This is final action, unless appealed to the City Council within 14 days.

**SPECIAL PERMIT NO. 05049**

**TO ALLOW A PARKING LOT IN THE**

**R-2 RESIDENTIAL DISTRICT,**

**ON PROPERTY GENERALLY LOCATED**

**AT SOUTH 56<sup>TH</sup> STREET AND N STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 26, 2005

Members present: Pearson, Carroll, Krieser, Sunderman, Taylor, Esseks, Larson and Carlson; Strand absent.

Staff recommendation: Denial

Ex Parte Communications: None.

The Clerk announced that the applicant has submitted a written request for two-week deferral.

Larson moved deferral, with continued public hearing and action scheduled for November 9, 2005, seconded by Sunderman and carried 8-0: Pearson, Carroll, Krieser, Sunderman, Taylor, Esseks, Larson and Carlson voting 'yes'; Strand absent.

There was no public testimony.

**SPECIAL PERMIT NO. 05050,**  
**HUNTERS POINTE TOWNHOMES COMMUNITY UNIT PLAN,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT N. 20<sup>TH</sup> STREET AND BENTON STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 26, 2005

Members present: Pearson, Krieser, Sunderman, Taylor, Esseks, Larson and Carlson; Carroll declaring a conflict of interest; Strand absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

Additional information submitted for the record: Tom Cajka of Planning staff submitted an e-mail from Larry Geiger with concerns about lack of open space, the density and that the streets are too narrow; and a letter from L.W. Hoffman with concerns about the connection to Thomasville Road, that there should be no connection to North Gate, traffic, and the buffer to the single family residences.

Cajka clarified that the approved mobile home court special permit shows a connection of North Gate Road from the mobile home court to the housing development to the west, and there is also a connection of Thomasville Road to North 18<sup>th</sup> Street shown on the approved special permit.

Proponents

1. **Tom Huston**, 233 S. 13<sup>th</sup>, Suite 1900, appeared on behalf of **Cameron General Contractors**, and requested a 30-day deferral to November 23, 2005, for the purpose of additional time to speak with the neighbors to the north and west. He thought they had an understanding with the property to the north about what would be done to build a road through their property, but it appears that the developer needs to provide them with more information. The property owners to the east are concerned about a 25' or 50' separation requirement. The developer will attempt to work through these issues in the next 30 days.

Larson moved to defer four weeks, with continued public hearing and action scheduled for November 23, 2005, seconded by Taylor and carried 7-0: Pearson, Krieser, Sunderman, Taylor, Esseks, Larson and Carlson voting 'yes'; Carroll declaring a conflict of interest; Strand absent.

Public testimony

1. **Bill Hoffman**, 4208 Bel-Ridge Drive, Lot 21, and former developer who laid out Belmar 4<sup>th</sup> and 5<sup>th</sup>, testified that there were no grade changes between the single family residences

and the subject property during the development of Belmar 4<sup>th</sup> and 5<sup>th</sup>. The subject property is putting a retaining wall on the rear of his lot with about a 20' drop. It does not show any utility easements. He suggested that it is very important that a survey be done of the entire area to be sure there are no grade changes. There is a lot of grading to be done. There is also about 80' between all the homes and the property line. He noted that the proposed townhouses are two-story, with 3 bedrooms on the top floor, and they are pretty close together. He assured that there would not have been this many units under the previously approved special permit. He does not know where the utility easements will be located. The area is extremely compact. He agreed that they are nice units but there are too many in this compact area.

Hoffman also pointed out that with 116 three-bedroom units, there will be over 450 residents added to this area, and probably over 200 cars. Where Bel-Ridge Drive meets Superior Street, there is a library on one corner, a church on one corner, and nursing care center on the other corner and the traffic is heavy at this intersection. It is a real problem intersection and it will need a traffic signal.

Hoffman believes there would be 80 units if the property were developed as double-wides. He believes it is a good project but it is too crowded. He does not care to see another connection to the east because there is a lot of grading involved. There have been deer and all kinds of wildlife in this vacant area. He would like to see something more compatible to the single family homes. The duplexes do not bother him, but they are just too crowded.

**2. Dale Zeilinger**, 3935 N. 20<sup>th</sup>, the last house on the left before the area of application, testified with concerns about the street width on N. 20<sup>th</sup> Street, which he believes to be barely 21' wide. He has not seen the proposed plan for access to the area. He is concerned about the amount of traffic. The street in front of his house is privately owned. Will it be a private street or public? You will have to go through a private street to get to that area.

**3. Leo Behne**, 4240 Bel-Ridge Drive, Lot 17, Belmar 4<sup>th</sup> Addition, testified that last Monday or Tuesday, the property owners received a letter from the developer inviting them to attend a meeting. This was the first time that anyone in the neighborhood had had any information. A lot of concerns were raised at the meeting. When he purchased his lot in 1976, he was told and saw that there was a 50' restriction on structures between his lot line and the trailer court, and there was also going to be a 25' green planted buffer area to shield the single family homes from the trailer court. Therefore, it was quite a shock to see all of these units abutting our lot lines. These are massive structures, very tall, quite wide, and they are located very close together. This will virtually block out the sun to his property. He purchased the lot on the east side of Bel-Ridge to get afternoon shade. They have watched the wildlife, flora and fauna in this vacant area. He is not against the development, but the density and the distance from his lot are a concern. There will be concrete patios at the back of their structures and there will be very little green area.

In addition, Behne advised that his lot is in a low area and he has been fighting erosion. The drainage from the lots above him all drain through his back yard and he is very concerned that

when they grade this area there will be a lot more erosion. He has not been able to get any answers about sediment control, plants or erosion control after development is done.

Behne also advised that he passed a letter around the neighborhood after the neighborhood meeting with the developer and very few people knew about the plan and were frankly amazed at the density being proposed. He has 21 of the 24 property owners directly affected on the west side that have signed a letter stating they want the 50' green space retained. The developers have asked the residents to request that the Planning Commission not connect Thomasville Road to this development, and the neighbors do agree.

**4. Katherine Hamersky**, 3932 N. 17<sup>th</sup>, Lot 6, Belmar 6<sup>th</sup>, stated that she did not receive notice of the neighborhood meeting. She did receive the notification from the City. She is concerned about the additional traffic that will be in the area and whether a traffic study has been done. 17<sup>th</sup> Street and Fairfield Street are extremely busy. She is opposed to the density and she does not want patios abutting her property. She assumes these homes will be targeted to families. Both Campbell and Belmont elementary schools are at capacity. She does not see the recreation area on the map and she would like to see some kind of recreation area that is considerable in size.

**5. Steve Flesner**, 1710 North Gate Road, Lot 1, expressed his concern about the grading as his property is at the bottom of the grade. He is also concerned about the buffer. He just moved into the property in April this year. This land has been vacant for a long time and he believes there probably is good reason for it. He is not against the development but he would like to see more research into the buffer zone between the properties. Looking at the layout, on the east side of proposed N. 18<sup>th</sup> Street, there are eight dwelling units. He suggested that they remove these eight units to provide the buffer zone and maybe a playground area.

**PRELIMINARY PLAT NO. 05014,**  
**HAMANN MEADOWS,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S. 76<sup>TH</sup> STREET AND PIONEERS BLVD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 26, 2005

Members present: Pearson, Carroll, Krieser, Sunderman, Taylor, Esseks, Larson and Carlson; Strand absent.

Staff recommendation:

Ex Parte Communications: None.

Proponents

**1. J.D. Burt of Design Associates** appeared on behalf of **Don Hamann**, the developer. The plat is very straightforward. The existing zoning is R-3. They are not proposing to change the zoning. The lots are all in compliance with the zoning district. They are proposing the extension of 76<sup>th</sup> Street south of Fox Hollow. Public Works has asked that extension to be designed and constructed as a collector street and the developer agrees to make that change, along with parking restriction on the east side. The lots consist of three cul-de-sacs on the west of 76<sup>th</sup> and one on the east side. Hamann's residence will be retained in the northeast corner of the site.

Condition #1.1.1 requires the developer to show sanitary sewer and water service extended to Lot 1, Block 1. The developer has made some changes to the plat in response to this condition which they would like to submit. These changes also require two additional waivers. They have altered the lot lines between Lots 1 and 8 on the east side of 76<sup>th</sup> to provide 20' strip out to 76<sup>th</sup> Street for Lot 1. The two additional waivers include creation of a double frontage lot and a non-perpendicular lot line to the right-of-way for the common lot line. In order to provide the sewer and water from 76<sup>th</sup>, Lot 1 would have frontage on 76<sup>th</sup> as well on the future 77<sup>th</sup> Circle. The reason for postponing the construction of the cul-de-sac is that they need to work with the neighbor to the east who needs to dedicate right-of-way and participate. Burt believes that the sewer and water connection to 76<sup>th</sup> Street is the best way to achieve this.

Condition #1.1.2 (26) has to do with the trail location. Burt advised that Mr. Hamann is in negotiations with the city in dedicating an easement and ownership of the westerly portion of the property to the Parks Department to allow the placement of the City bike trail. Burt is not sure what that means and how far east that trail might extend. It does not appear to be needed and the city had considered condemnation until this easement was negotiated.

Burt also advised that prior to submittal of the plat and the final design, a letter and concept plan was sent to 49 of the neighbors. Typically, the Planning Department notifies people within 200'. This letter went to property owners within 300', including the Fox Hollow Neighborhood Association. One person to the west of 76<sup>th</sup> called with a concern about grading; there was a phone call from a person on the north, east of 76<sup>th</sup> Street, who was concerned about buffering. This plan is consistent with the neighborhood with single family attached and detached residences. There were eight other phone calls, either in support or interested in the price of the lots.

Carroll inquired as to the current access for Outlot 1. Burt advised that Mr. Hamann's driveway is off of Pioneers Blvd. It is likely that the east side of 76<sup>th</sup> will be in the latter phases of development and it is proposed that he use some sort of driveway back to the east side of 76<sup>th</sup> until such time as 77<sup>th</sup> is constructed. Burt clarified that there is nothing in writing with the neighbor to the east. They are showing Mr. Hamann's half of the cul-de-sac in a similar fashion as on the east side and at some point these two large estate type lots may be sold and come back forward as some kind of CUP. Carroll wondered about the access if the circle is not approved by the east neighbor. Burt believes the city could participate in an

improvement district and acquire right-of-way, or maintain some sort of access easement or hold one of the lots.

Burt then requested a two week delay to advertise the additional waiver requests.

Sunderman moved for a two-week deferral, with continued public hearing and action scheduled for November 9, 2005, seconded by Taylor and carried 8-0: Pearson, Carroll Krieser, Sunderman, Taylor, Esseks, Larson and Carlson voting 'yes'; Strand absent.

There was no other public testimony.

**COMPREHENSIVE PLAN CONFORMANCE NO. 05013,**  
**PROPOSED DECLARATION OF SURPLUS PROPERTY**  
**and**  
**SPECIAL PERMIT NO. 05048,**  
**FOR RECONSTRUCTION OF A NONCONFORMING USE**  
**WITH WAIVER REQUEST TO REDUCE THE REAR YARD**  
**SETBACK, ON PROPERTY GENERALLY LOCATED**  
**AT 4<sup>TH</sup> & F STREETS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 26, 2005

Members present: Pearson, Carroll, Sunderman, Krieser, Taylor, Esseks, Larson and Carlson; Strand absent.

Staff recommendation: A finding of conformance with the Comprehensive Plan on the declaration of surplus property, and conditional approval of the special permit.

Ex Parte Communications: None.

Additional information submitted for the record: Greg Czaplewski of Planning staff submitted a memorandum outlining revisions to the comments by the Public Works Watershed Management Division, which are hereby substituted for #6.2 and #6.3 of the analysis in the staff report.

Proponents

**1. Troy Gagner, Urban Development,** gave a brief history of the project. Starting in 2003, the city began working with the previous owner (Arck Foods), who had requested to do an expansion at the existing site. It was determined early on that such an expansion was not going to work for the neighborhood and Urban Development began working with



Arck Foods to find a new location at a distribution facility at 6240 McCormick Drive. In doing so, Urban Development has been able to retain about 40 jobs and to add 20 jobs with that project.

At that time, Urban Development considered uses for the existing site, including single family housing.

**2. Steve Werthmann, Housing ReHab and Real Estate Manager for Urban Development,** stated that Urban Development is always searching for infill lots for Neighborhood Works and for Habitat for Humanity, and they had considered using this site for Habitat for Humanity; however, Nebraska Department of Economic Development declined the application for funding because of the proximity to the railroad tracks and floodplain, noise and contamination issues. The City Health Department also chimed in for environmental justice reasons and did not want Urban Development to participate. HUD states that projects within 100' of railroad tracks are not a desirable location. There are double railroad tracks on 4<sup>th</sup> and F, which are very close to being within 100'. Urban Development was not interested in seeing any more rental property in the area and thus started exploring more options for a less intense use, with no industrial. Urban Development went back to the neighborhood and it was determined that this special permit would be the best approach because the neighborhood would always be in the loop as far as control of the land.

Werthmann then addressed the proposal before the Commission, which allows a greenhouse business, with botanical gardens around the greenhouse and landscaping to create a point of interest in the South Salt Creek Neighborhood. It was confirmed that this is the site of the old Prairie Maid meat factory.

Carroll inquired whether the applicant for the greenhouse minds moving the building as required by the conditions of approval. Werthmann explained that the original drawing showed the setback in the back yard and Planning suggested that the back yard setback be where the small historic house is located which is being retained. That will be the back yard setback and Urban Development is in complete agreement and they will move the building.

Taylor inquired about the contamination issue. Werthmann advised that there was a leaking underground fuel tank located where the parking lot will be located. The fuel tank was removed in 1994, but the environmental review found a contamination at that location. It was determined that this area could be left alone as long as the parking lot is located over it.

### Opposition

**1. Danny Walker, President of South Salt Creek Community Organization,** submitted the following questions from the South Salt Creek Community Organization:

- Does the existing structure contain asbestos in any shape or form? If yes, what steps will be taken to assure safe removal?
- What type of underground contamination exists on the property?
- Did the NDEQ inspect the property for contamination? If not, who did?
- Was the underground contamination disturbed as a result of major construction (sanitary sewer installation and removal of roads) along the 4<sup>th</sup> Street corridor?
- Who is responsible for the underground contamination and cleanup of it?
- Why wasn't the property checked for contamination prior to purchase?
- Be advised, neighborhood residents seem to think that the contamination actually goes beyond fuel storage tanks.
- Be advised, the paved alley between 3<sup>rd</sup> and 4<sup>th</sup>, E and F Street, is in constant use by residents entering the rear of their properties to park. Therefore, the alley must remain open. Is an alley considered a public thoroughfare?
- Be advised, additional parking on F Street as a result of the new business should be kept to a minimum due to the fact that the F Street pedestrian underpass takes up parking space for safety (law enforcement vision) reasons.
- Be advised, there is huge storm water drainage problem on the east end of the property facing 4<sup>th</sup> Street. In part due to very poor design and poor workmanship involving the so-called new 4<sup>th</sup> Street corridor.
- The neighborhood objects to any restrictions placed on the business regarding parking on the business's property adjacent to 4<sup>th</sup> Street.
- Will the proprietor of the nursery act responsibly regarding any and all types of chemicals used at the proposed nursery?
- Will air contaminations from the locomotives on the 3<sup>rd</sup> Street corridor affect the nursery?
- Will dust (pulverized limestone) from traffic on 4<sup>th</sup> Street have an adverse effect on the nursery?

Walker requested that the applicant provide written answers to these questions within 10 days. Otherwise, the South Salt Creek Community Organization will appeal the special permit to the City Council.

In response, Greg Czaplewski of Planning staff advised that the alley is a public alley and he does not believe that the proposed use would be closing that for any purpose. They are showing a gate and a screen along the alley that they may use for deliveries once in awhile.

Pearson inquired whether the site was tested for contamination before it was purchased. Werthmann stated that one testing was done by HWS (phase II environmental). They researched the records for any contamination and they followed up with the soil borings to find the underground tank contamination. As far as other contaminants, nothing else was found by the testing. The asbestos is being removed by qualified asbestos removers and all of the asbestos contamination will be eliminated.

As far as responsibility for clean-up, Werthmann advised that to be the reason for placing the parking lot at that location. There will be an agreement with the owner that the city may come back in at some point in the future and monitor the contamination and do the clean-up, if need be. The previous owner (Arck Foods) was not responsible for that contamination, and Prairie Maid is no longer in business. NDEQ determined that the city is now responsible. DEQ can do the cleanup and the city will bear the cost of any cleanup.

As far as parking on F Street, at the time of the original site plan, there was already a curb cut coming off F Street and nothing on 4<sup>th</sup> Street. The site plan showed access from F Street and from 4<sup>th</sup> Street. The Planning staff suggested limiting the entrance for the parking on 4<sup>th</sup> Street instead.

As far as chemicals being used by the greenhouse, Werthmann advised that the owner will use insecticidal soap on the plants, which is very environmentally friendly. He will not use any other type of insecticides. That is the only chemical that will be stored. There will be some fertilizer for the potted plants.

Werthmann agreed to provide written answers to the questions by the South Salt Creek Community Organization within 10 days.

**COMPREHENSIVE PLAN CONFORMANCE NO. 05013**

**ACTION BY PLANNING COMMISSION:**

October 26, 2005

Carroll moved to find the proposed declaration of surplus property to be in conformance with the Comprehensive Plan, seconded by Larson and carried 8-0: Pearson, Carroll, Krieser, Sunderman, Taylor, Esseks, Larson and Carlson voting 'yes'; Strand absent. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 05048**

**ACTION BY PLANNING COMMISSION:**

October 26, 2005

Carroll moved to approve the staff recommendation of conditional approval, with the amendments to the analysis submitted today, seconded by Taylor.

Pearson noted that the city purchased property that was vacated by a business that was relocated, which is good. So then we have this property that is a problem because we don't have a tenant. Her only concern is that we have a business that is interested in the site which will take demolition of the existing building, and we have a business in the plant business (hopefully not plants that you can eat because it appears we are going to leave in place an underground contamination). She does not feel very good about it but she will vote in favor because she does not know what other plan might be any better. She is trusting that the business will take care of the site, but she does have a lot of questions about the site.

Carroll complimented Urban Development because it was a problem site. The housing did not work, but they did not stop there and moved forward to move another business into the city. He thinks a nursery is a good fit for the area. It is good for the city and for the neighborhood.

Larson agreed. He is familiar with the site and this is going to be a tremendous community improvement for that area.

Taylor expressed concern about the contamination and any potential costs involved in the cleanup. He admires what is being done and it took a lot of imagination to come up with this plan. He does not want to discourage that, but he really has a cause for concern with the contamination and how serious of a problem it could be in the future and how it will affect the vegetation that is going to be planted.

Motion for conditional approval, with the amendments to the analysis submitted today, carried, 8-0: Pearson, Carroll, Krieser, Sunderman, Taylor, Esseks, Larson and Carlson voting 'yes'; Strand absent. This is final action, unless appealed to the City Council within 14 days.

**ANNEXATION NO. 05017;**  
**CHANGE OF ZONE NO. 05074,**  
**FROM AG AGRICULTURAL TO R-3 RESIDENTIAL;**  
**and**  
**PRELIMINARY PLAT NO. 05015,**  
**HARRISON HEIGHTS,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT N. 91<sup>ST</sup> STREET AND LEIGHTON AVENUE.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 26, 2005

Members present: Pearson, Carroll, Krieser, Sunderman, Taylor, Esseks, Larson and Carlson; Strand absent.

Staff recommendation: Approval of the annexation, subject to an annexation agreement; approval of the change of zone; and conditional approval of the preliminary plat.

Ex Parte Communications: None.

The Clerk announced that the applicant has submitted a written request for two-week deferral.

Carroll moved to defer two weeks, with continued public hearing and action scheduled for November 9, 2005, seconded by Larson and carried 8-0: Pearson, Carroll, Krieser, Sunderman, Taylor, Esseks, Larson and Carlson voting 'yes'; Strand absent.

There was no public testimony.

**CHANGE OF ZONE NO. 05052,**  
**UNIVERSAL ADDITION PLANNED UNIT DEVELOPMENT,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S. 14<sup>TH</sup> STREET AND PIONEERS BLVD.**  
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**     October 26, 2005

Members present: Pearson, Carroll, Krieser, Sunderman, Taylor, Esseks, Larson and Carlson; Strand absent.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

The Clerk announced that the applicant has submitted a request for deferral until December 7, 2005.

Taylor moved to defer, with continued public hearing and action scheduled for December 7, 2005, seconded by Pearson and carried 8-0: Pearson, Carroll, Krieser, Sunderman, Taylor, Esseks, Larson and Carlson voting 'yes'; Strand absent.

There was no public testimony.

\*\*\*\* break \*\*\*\*

**MISCELLANEOUS NO. 05017**  
**REQUEST FOR “REASONABLE ACCOMMODATION”**  
**ON PROPERTY LOCATED AT**  
**424 N. CODDINGTON AVENUE.**  
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 26, 2005

Members present: Pearson, Carroll, Krieser, Sunderman, Taylor, Esseks, Larson and Carlson; Strand absent.

Staff recommendation: Conditional approval

Ex Parte Communications: None.

Additional information submitted for the record: Greg Czaplewski of Planning staff submitted an e-mail from Dick Esseks to the Planning Commission concerning police calls at the specific addresses requesting “reasonable accommodation”.

Proponents

**1. Scott LeFevre**, CEO of **Developmental Services of Nebraska** (hereinafter DSN) appeared on behalf of the applicant and withdrew Miscellaneous No. 05020, a request for “Reasonable Accommodation” at 416 N. Coddington Avenue, because there is not a group home currently in existence within 1200 feet of that location. They will be making 416 N. Coddington a group home, which would then require this request for “reasonable accommodation” at 424 N. Coddington Avenue.

LeFevre went on to state that DSN is a charitable, nonprofit organization providing services to children and adults with developmental disabilities. The services are basically funded by Nebraska Health & Human Services, providing a range of services. The state purchases the services from DSN on “kind of an ala carte basis”. Each person has an individual service program. DSN is not a containment or confinement center. They simply provide rehabilitation services and specialize in those individuals with difficult or hard to manage behavior. DSN serves some of the most challenging behaviors in the state of Nebraska, with service locations in Omaha, Lincoln and Kearney.

This is a request for reasonable accommodation from the separation requirement at 424 N. Coddington Avenue. By right, DSN is going through the process of establishing a group home at either 416 North Coddington or 418 N. Coddington. This is a request to allow for another location with four individuals as opposed to three individuals at 424 N. Coddington Avenue. There are currently three people living at this location and they want to add one person.

Esseks commented that he respects the services being provided and he has great sympathy for the reasonable accommodation provisions, but he has some practical questions because he believes we may be setting a precedence:

Q: How many dwelling units for disabled citizens does DSN manage in the 400 block of N. Coddington?

A: Four locations.

Q: In the four units on N. Coddington, how many residents does DSN currently have?

A: 12 residents.

Q: What is the minimum number of DSN staff in each dwelling unit when any client is there during the morning hours?

A: One in the morning; one in the afternoon and evening; and one overnight.

Q: Currently, do any convicted felons reside in any of the four dwelling units?

A: Could not answer this question.

Q: Are any of the current residents on the Nebraska Sex Offender registry?

A: No.

Q: The table that Esseks submitted with information from the Lincoln Police Department indicates more violent behaviors at the dwelling units managed by DSN than at other homes in the same block. What training or other steps has DSN taken to prepare staff to deal with a possible violent behavior?

A: DSN has a comprehensive training program, with a dedicated training center on West O Street, which was just built about two years ago. They have a training staff. The training used for aggressive behavior is called therapeutic aggression control techniques. It is 18 hours of training and involves 12 hours of de-escalation technique, recognition of antecedents to behavior, teaching staff how to intervene prior to the escalation of a behavior; and then 6 hours teaching actual physical intervention techniques and methods.

Q: What changes in staffing levels will occur if the city allows DSN to place four clients in a dwelling unit?

A: The staffing is mandated by the state of Nebraska. None of DSN's current locations are anywhere near the mandated level of staffing because DSN's staffing is much more intense than the minimum required staffing in the manual and correspondence that the Planning Commission has received. Generally, at each location, per three residents, there are two staff on duty until overnight. DSN's staffing is very intense. Two staff to three consumers is very intense. The reason for this is because DSN serves people with challenging and aggressive behaviors. DSN serves people that other providers will not serve and who are not appropriate for placement at the Nebraska State Developmental Center or the Regional Center. These people have no other place to go. If DSN were to add an additional person, the needs of the person as evaluated by the state of Nebraska determine their level of staffing. With each person comes the determination already made by the state as to the intensity of staff. A unit of service is an hour of time. Each person is evaluated through an objective assessment process conducted by the state, and they come to DSN with a pre-determined staff intensity level. DSN is required to follow that staffing level and it is monitored by the state.

**2. Brian Kanter, Chief Operating Officer of DSN of Nebraska,** offered that DSN's policy and procedures, as approved by Nebraska Health and Human Services, require 29 hours of pre-service training before an individual can work alone with any individual receiving services. DSN facilitates over 50 hours of training. They also employ an on-site psychologist, behavioral consultant, and recently added a traumatic brain injury consultant to offer additional training. The one misperception is that DSN is a hospital or incarceration facility. DSN is neither. DSN supports the individuals that it serves. They serve individuals with developmental disabilities. DSN does not serve criminals. This proposal will allow DSN to increase its staffing intensity, which is determined by the state.

Esseks asked the applicant to address outreach to the community. DSN has four units in one block. What is the history of outreach efforts to the neighbors so they know who to call, etc? Kanter stated that they met with the Coddington neighborhood about a year and a half ago in response to an incident. They have not met since then but are certainly willing to do so.

Carroll inquired as to the process for an emergency. LeFevre stated that it depends on the type of emergency. Carroll inquired when they would call the police. LeFevre's response was that generally, the individuals in services are their own legal guardians, and being such they carry all the rights and responsibilities as any other citizen. If they commit a crime, often their team (interdisciplinary team from several specialties, i.e. state, medical staff, schools, work, day service, family members) decides how DSN is to respond to an emergency. Sometimes the team directs DSN to call the police if the individual commits a crime, because if the individual understands and is able to premeditate something, then they should have the same consequences as anyone else. DSN is required to follow the recommendations of the team. DSN has a contract with the state to provide services. DSN does the work, but there is a whole group of people behind the scenes that determines how DSN interacts or responds to situations regarding individuals in services. It varies from person to person.



Kanter offered that DSN is very passionate about this population. They are proactive instead of reactive. He has worked with the Lincoln Police Department in regard to individuals that have had significant amounts of contact with the police. An "individual justice plan" is delegated to DSN by the team. Incidents have occurred and services have been terminated, but DSN wants to give it every effort that they can for an individual to reside in the community.

Carroll inquired about who the neighborhood would call with a question or complaint. Kanter indicated that DSN has 34 locations in Lincoln. For example, there is one residential coordinator for the Coddington address who has a cell phone and who is expected to build relationships with the neighborhood. Carroll inquired whether every neighborhood association has the contact information. LeFevre stated that to be generally so, but DSN serves individuals who are very high functioning and they don't necessarily want someone knowing that they are "in services". DSN serves some individuals who believe that to be very stigmatizing, so not all of DSN's locations are publicly acknowledged and they do not have to be acknowledged because DSN has to follow the HIPPA requirements and not disclose whether or not someone has a disability.

Carroll believes that DSN is legally liable for the property, so if there were a problem or concern about the property, as the lessee, it is DSN that needs to be contacted. Who would a person contact? LeFevre suggested that there is staff at the location that can be notified. If there is a problem, a person could go knock on the door and talk to the staff. 99% of the time there is more than one staff on duty at every location except during overnight hours.

Carroll inquired whether there is another number to call if they want to move up the chain of command. LeFevre suggested that anyone could call their central office at 435-2800. In regard to the police calls, LeFevre explained that because DSN is a service agency, they are required by law to self-report. If DSN suspects that a crime has been committed, DSN is required by law to self-report that crime. He believes that many of the police calls in the report are "self-reports". He believes the numbers on the police report are high because DSN is "self-reporting" when the neighbors wouldn't do such a thing.

Pearson inquired whether there is a written procedure where a neighbor complains and actually goes somewhere, is documented and moved on to be resolved. LeFevre stated that it would come to DSN in the form of an incident report. If the problem is resolved by the staff person, it is not reported.

Pearson noted that the request is to go from three to four residents, which changes this from a family to a group home under the Lincoln Municipal Code. Is there any sort of statistical information that shows that by adding that fourth person, the amount of incidents will go up or down? LeFevre did not have such information. Pearson suggested then that by adding a fourth person, the situation could be made worse in a neighborhood.

Kanter then discussed the financial issue. The SSI payments are approximately \$560 per month for utilities, food, rent, personal needs, etc. All of those numbers were based on four

individuals residing in a location. LeFevre added that the funding mechanism of the state is based on four people at a location. They will tell you that a three-person location is generally inadequate to sustain the cost.

Pearson then posed the question: By going from a home to a group home, what is the most number of individuals that can be in a group home? LeFevre stated that the largest number would be 15. There must be a minimum square footage per individual, minimum number of toilet facilities, etc. It is all spelled out in the regulations and DSN's licensing is dependent upon that. There is no latitude for adding any more than one person at any of these locations. DSN is not requesting anything beyond that.

Carlson sought clarification that DSN will not need to increase staff or services to serve four versus three individuals at this location. LeFevre responded, stating that the change in staff and services will depend on the person coming in for services. The state determines the staffing level. DSN serves very few people who have the exact same staffing level.

Carlson inquired as to how long 424 N. Coddington has had three clients. LeFevre believes it has been since 2003.

In general across the city, Carlson wanted to know how long DSN has had 3-person homes, Are you able to maintain them? LeFevre stated that it is dependent upon the individuals and the staffing that comes with those individuals. It is becoming increasingly difficult to sustain a three-person environment because the funding mechanism is based on a four-person environment. The breakdown that goes into the dollars associated with each intervention unit is based on the presumption that no one will live in a three-person environment. It is based on a four-person environment and DSN has been able to sustain the costs up to this point because they have received rate increases from the Legislature. This last year the rate increase was 1%. Health care insurance alone went up 30%. So many of the costs are rising dramatically but the reimbursement rate is not. For example, the cost of gasoline has caused an impact for transporting clients to and from appointments, etc.

Carlson inquired as to the typical rate increases. LeFevre stated that they have generally been 3%.

Carlson asked how many DSN facilities have had to close as a result of economic impact. LeFevre stated, "one". Carlson asked whether DSN was able to find housing for those individuals. LeFevre responded, stating that the City of Lincoln has one of the most restrictive familial codes across the country. In Lincoln, three people is considered a family, when it is usually five or six in other communities. DSN has been forced to rent duplexes where they sometimes rent both sides of the duplex to offset the cost associated with an environment.

Carlson inquired whether those reductions and those needs for consolidation impact DSN's ability to provide service and therapeutic benefit. LeFevre stated that the demand for services just continues to increase. DSN is 12 years old and currently employs over 500 people, who

are in place to serve approximately 300 people per year. DSN has a large infrastructure to support the individuals in services because their needs are so extensive. It has been very difficult to sustain the three-person environment. The objective assessment process is being retooled and as that happens sometimes funding for an individual will drop by one-half. Then we need to determine whether services need to be terminated. DSN cannot use service dollars for an individual's room and board. It is a violation of Medicaid and Nebraska could lose their Medicaid funding if DSN were to use the dollars they are paid for services to meet personal needs, room and board.

LaFevre further observed that it is a struggle to want to continue in the business that he loves so much because it is becoming increasingly more political and more difficult. DSN is trying to do good things for people. He went into the field because he had a passion. He has worked for many service agencies and he started DSN. DSN has so many success stories, but no one is interested in the success stories. They even invite the media to cover the success stories. DSN tries continually to refine their services.

Carlson inquired as to the rent increases at 424 N. Coddington. Kanter stated that they have been zero to 5% per year. The owner of the property leases to several human service agencies across the nation.

### Support

**1. Mike Morosin** testified as past president of the **Malone Neighborhood Association**, a neighborhood that has had to deal with group homes for well over 30 years. One of the biggest questions is staffing. There must be trained staff on duty 24-hours-a-day. Every person on staff needs to go through some behavioral management and anger management training. Two people on staff allows you to watch the front door and the back door. Many of the clients have a multitude of problems. How many group homes can one neighborhood support? We need to make sure there is a mechanism in place and that all the neighbors know it is okay to come talk to staff and make sure something is going to be done. He is in support of this application. It is just important to have enough staff available to take care of the problems.

Esseks observed that maybe the Malone Neighborhood Association has worked out a neighborhood support monitoring structure that makes the group homes fit in better to the neighborhood. Morosin concurred. Early on, the Malone Neighborhood Association decided to set up the program to take care of the problems. The group homes need to go to the neighborhood association and create a partnership to help each other.

### Opposition

**1. Edward George**, 4127 Holdrege Street, testified in opposition, relaying a situation he encountered with an individual at Matt Talbot Kitchen who stated that he was going to commit a terrible crime. The individual was in a group home. "A house is a house. A home is a

home.” People need to understand that. George suggested that it is not just providing a house for a person – it’s providing a home to support those people to succeed in society. We have to all work together to address these issues. We need help for these people. Somehow we have to come together.

**2. Joe Wilkins**, partner with the Knudsen, Berkheimer law firm and resident of 1808 S.W. 36<sup>th</sup> Street, testified in opposition. He stated that his comments are generally directed to each of these applications (Miscellaneous No. 05017, 05018 and 05019), and more specifically the group homes going from three to four people. He is concerned because the accounts in the newspaper indicate that DSN is unwilling or uncomfortable about providing detailed financial information as to whether their facilities are economically viable. There is a lawsuit against the city indicating that the zoning ordinance violates the Fair Housing Act. What DSN fails to recognize is the fact that the Fair Housing Act does require reasonable accommodation; however, it requires reasonable accommodation that is “necessary”. That is a step that everyone seems to be forgetting. That is where the economic viability of these three-person homes must be addressed in detail. Is it the city’s responsibility to make things easy for businesses? DSN apparently has a business model that does not work. If DSN is biting off more than it can chew – and they are – they are taking on responsibility for people with high needs – these are all people who have very special needs. It is DSN’s responsibility to have a business model that can fit within their income and expense guidelines. In this case, they are asking the city not to ask too many detailed questions about their finances. Who has the obligation of proving this? Wilkins contends that DSN bears the burden of proof. DSN must demonstrate that there is sufficient evidence to indicate that this is just not working.

Wilkins also expressed concern that DSN has the same players as what used to be known as “Active Community Treatment” (hereinafter ACT). ACT had a demonstrated inability to effectively and safely manage homes. It is simply not a viable, workable, realistic expectation to not be able to say “no”. They cannot expect the city of Lincoln to bail them out. DSN needs to establish an effective and reasonable business plan that fits within their income and expenses just like everyone else in business.

Wilkins was also confused as to what amount of training is required. He does not believe a week of training is sufficient to “qualify” someone to supervise people who admittedly are challenging residents.

As far as “these people having the right to commit a crime just like anyone else”, Wilkins does not believe that is the point. No one has the right to commit a crime. You are expected to follow the law. In this case, DSN is taking on the responsibility of supervising the people who need that supervision. They don’t have the right to commit a crime. If DSN takes on the responsibility, it is DSN’s responsibility to make sure they are not committing crimes.

Under the Fair Housing Act and ADA, DSN is not only required to demonstrate that it is a reasonable accommodation but that it is also “necessary”. Is it in fact necessary? Is this Commission satisfied that they have demonstrated that they cannot make it work with three

people? There are other businesses providing the same services. Biting off more than you can chew and asking the city to bail you out is not a viable business plan.

Taylor asked Wilkins to identify other similar companies who provide these services. Wilkins did not have a name but offered to provide a list of other providers.

Taylor asked Wilkins whether he would agree that the services that DSN provides are uniquely different than a business for profit would provide. Wilkins disagreed. Nonprofit is a bit of a misnomer. Nonprofit businesses make money. Whether you are a nonprofit organization or a charitable organization or a for-profit corporation, undeniably, each of those entities are required to administer their business in a sound and economically viable manner. It is not enough to say, "I am doing charitable work so I am not responsible to make sure the books balance." If DSN is serving all of these high need residents, then they need to figure out a way to bring in a lower percentage of those people, to dilute it to the point where they can effectively treat those people. It does not make any sense to say, "I have a difficult time saying no".

**3. Cody Talbott**, 320 N. Coddington, testified in opposition because this has had an impact on the block. It reminds him of the man who had gestured to his brother and a friend of his, who has since moved out of the neighborhood. Luckily, he and his brother had been taught to come right home. After learning about this proposal, about six houses in the neighborhood have gone up for sale.

**4. Roxanne Talbott**, 320 N. Coddington, testified in opposition. She has never been informed that there is a coordinator between the group homes and the neighborhood. Her neighborhood has never had any notifications from DSN. They say they can get a duplex with a shared supervisor. Will they also share the staff which then reduces the ratio of staff to clients? This is the first time she has realized that there were four units on her block with 12 residents. She believes this is enough on her block. If they start with our block, they are going to ask for this all over the city. She also fears that next year they are going to ask to increase it to five or six clients. She has experienced interactions and incidents, some that involved the police. The DSN residents want to be in the community but we don't see very many of them. It does cause concerns for everyone on the block. She has lived there 18 years. DSN denied that they were going to be group homes for sex offenders. They do not have level three's but they have had others.

**5. Rebecca Barnes**, 330 N. Coddington, testified in opposition and submitted her comments in writing. Unsupervised residents of group homes with a history of violence are becoming a threat to our neighborhoods. Since the residents are not held accountable for their actions,

they continue to be problems in neighborhoods with families with children. This will have far-reaching implications in the future. Unless and until there are more stringent safety measures and training regulations in place requiring group home owners and employees to be held responsible for the actions of their disabled clients, the city has no business allowing zoning changes for more group homes in family neighborhoods.

Barnes acknowledged that she has a relative with developmental disabilities who is allowed to live independently with a family. But the distinct difference is that she does not have a history of violence. The issues we are looking at these days are level one, two and three sex offenders. These individuals are not convicted because they are unable to withstand a trial.

**6. Glenn Cekal**, 1420 C Street, testified in opposition suggesting that maybe we need to learn to say “no” until we have more of an understanding of when it is proper to say “yes”. He does not trust the way we are handling the welfare situation. We need to ask more questions.

#### Staff questions

Carroll asked staff to clarify the reason for the applicant withdrawing the “reasonable accommodation” request at 416 N. Coddington Avenue. Czaplewski advised that the issue with the two requests for Coddington Avenue is that there is not an existing group home established. The spacing requirement does not apply if he withdraws one of those. They would establish the one group home at 416 North Coddington and then the location at 424 North Coddington would need the reasonable accommodation.

Rick Peo of the City Law Department clarified further that DSN has the ability to designate a site as a group home. All they have to do is go to Health & Human Services and ask for their license to be at 416 N. Coddington. It is a matter of right that they can have one group home in this area and they are designating 416 as that group home, and then the issue at 424 is whether they can have another group home within ½ mile.

Peo also clarified that all of these applications are separation issues, all asking to be located within ½ mile of another group home. They are saying they want to waive the separation requirement to allow the second group home to be located within ½ mile of the other. This second group home will be limited to four people. They will not seek the maximum of 15 residents.

Larson does not believe the Planning Commission has jurisdiction over that number. Peo stated that they need an accommodation to allow the two homes to be within a certain distance of each other, and they are willing to put a limitation on that. 416 is not going to be an issue. If it is licensed as a group home, the Planning Commission will not see it.

Esseks wanted to know what security there is that 416 will be limited to four. Peo advised that 416 can have up to 15 if they can meet state standards. They are saying that 424 would be limited to four people.

Sunderman commented that the staff report does not say anything about limitation of four. Peo stated that the limitation to four was in their application. It is a restriction they are putting upon themselves. Peo does not know how many they can house at 416, but they will have to comply with the standards.

Krieser inquired whether they could ask for five at 424 later if they have enough square footage. Peo stated that it would have to be a separate request and heard independently. The issue is one of necessity. Is there a need for a waiver of spacing requirements in order to allow a second group home to be here? Necessity can be financial need or therapeutic need for the benefit of the people receiving services; it might be that there are not sufficient other locations. It is the applicant's burden to show that necessity.

#### Response by the Applicant

LeFevre pointed out that DSN is very heavily regulated by HHS, whether the individuals are actually residing in what the City would classify as a group home or they reside in a three-person environment. DSN must comply with Medicaid requirements; they have to comply with regulations governing the administration of services for individuals with developmental disabilities through regulation and licensure; and then additionally, they have to comply with an additional set of regulations through the developmental disability system. DSN has contended and will continue to contend that there is a financial need, which is almost self-evident. LeFevre suggested that the burden falls upon the city to show that the request is unreasonable because it would create an undue administrative or financial burden for the city.

DSN provided the financial information for the last request. DSN did not receive a request for additional financial information on these locations and LeFevre indicated they would be willing to provide the information.

LeFevre assured that DSN's business model is a very sound business model. They are not in financial peril. They are not going to collapse. DSN provides some people with day services only. Some people live in their own apartments and DSN helps them with budgeting, shopping, etc. The state purchases DSN's services on an ala carte basis.

LeFevre also observed that some people do not even know DSN is in some neighborhoods.

LeFevre returned to the issue of cost. DSN is looking at a specific pot of money that the individuals in services have to use to pay for their care. The other money received by DSN pays staff salaries and training. The violent behavior training is 18 hours and they must be recertified once a month. All of the training is approved by HHS. They are required to have 29 hours of pre-service training, and they provide 50 hours. Yes, there will be incidents. DSN has no more direct control over someone else's behavior than a parent does over their

children. ACT had one incident that was a major incident. HHS thoroughly investigated that incident. DSN was thoroughly investigated by law enforcement and no charges were made. LeFevre submitted that this is financially necessary. The DSN locations have to meet certain standards. LeFevre offered to provide tours for the Commissioners.

Esseks expressed concern that there is enough square footage for four people. LeFevre stated that if there are four bedrooms, they would serve four people. They could not put 6 or 10 people at this location.

**ACTION BY PLANNING COMMISSION:**

October 26, 2005

Taylor moved approval, with conditions. Motion failed for lack of a second.

Pearson moved to deny, seconded by Larson.

Pearson stated that she has not seen the evidence that this accommodation is financially or therapeutically necessary other than anecdote.

Esseks pointed out that there is a third ground to deny in addition to undue financial or administrative impact, and that is whether this action would fundamentally alter the program the city seeks to administer. We do have zoning regulations designed to promote health, safety and general welfare, and to conserve the value of property. Esseks is very sympathetic to the need to house developmentally disabled people. He just wants more information regarding the economic necessity because it would make him feel better as a Commissioner. If they submitted the financial information previously, they should do it again. He would prefer to defer action.

Carlson stated that he will support the motion in terms of the necessity and financial necessity. Despite questions specific to the subject, he does not believe it has been demonstrated that there is therapeutic necessity or financial necessity.

Taylor is disappointed in the action of his fellow Commissioners. He believes the applicant has demonstrated the need. He is concerned because of the fears that were vocalized by some other testimony, but he is not convinced they could do it more economically. He would support an action to defer this until we get more information. He is concerned that we have people in society that are falling between the cracks.

Carlson pointed out that the Commission is making a recommendation on a specific site and testimony on other sites is not germane. It is important that this determination be made on the request to waive the community zoning standard and whether or not the threshold of therapeutic and financial necessity has been demonstrated.



Motion to deny carried 7-1: Pearson, Carroll, Krieser, Sunderman, Esseks, Larson and Carlson voting 'yes'; Taylor voting 'no'; Strand absent. This is a recommendation to the City Council.

**MISCELLANEOUS NO. 05018**

**REQUEST FOR "REASONABLE ACCOMMODATION"**

**AT 1661 TIMBER RIDGE ROAD.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**     October 26, 2005

Members present: Pearson, Carroll, Krieser, Sunderman, Taylor, Esseks, Larson and Carlson; Strand absent.

Staff recommendation: Approval

Ex Parte Communications: None.

Additional information submitted for the record: The same e-mail submitted on Miscellaneous No. 05017 from Dick Esseks to the Planning Commission concerning police calls at the specific addresses requesting "reasonable accommodation" also applies to this application.

Greg Czapslewski of Planning staff explained that this request is to go from three to four residents. The staff recommendation is to approve four residents only, not 15.

Proponents

**1. Scott LeFevre** appeared on behalf of the applicant, **Developmental Services of Nebraska** (hereinafter DSN). This location is down the street from another group home with four individuals. The request is to house four individuals in this home. Besides the economic benefit, there is a therapeutic component. If staff ratio is increased, more support is provided. There are recreational benefits. It works better to have two staff people. If people with like needs reside in the same location, the staff can be more specific.

Esseks inquired about other facilities within a two-block radius. LeFevre replied there are two. Esseks noted the density in this neighborhood is lower.

Larson wondered which home is currently a group home on Timber Ridge. LeFevre replied that 1720 Timber Ridge is a group home.

Larson inquired why DSN cannot come back every year and ask for another group home. LeFevre finds this question very similar to asking, "what if an African American person is allowed to move in more and more every year." He would like someone to present evidence. Everyone testifying has been anecdotal.

Pearson would like to know if another staff person would be added if another resident is added. LeFevre stated that each person comes with requirements for a certain number of staff hours. It is therapeutically beneficial if people with the same needs can live in the same setting.

Pearson wondered if it is therapeutically beneficial each time you add one person. Is the change from three to four the critical break to add more staff or is it every person? LeFevre replied it is therapeutically and financially beneficial if they are able to have people with like needs residing together instead of having another location and incurring the costs involved.

Carroll questioned how often the residents change. LeFevre noted that individuals in the program choose their services. It is not often that they have a turnover. He believes the residents have been at this location for two years.

Carroll questioned if the economics for this house were provided, would it show the need for another person? LeFevre can provide staffing regulations and economic breakdown on what it costs for care.

Esseks thinks the precedent that could be set is potentially so big that we need a strong justification for what is being done. There is a civic responsibility. We have established a way for DSN to establish what may be necessary in the future. We are on the brink of something more momentous and he believes the Commission needs more documentation.

Taylor noted that some issues have been addressed in the community. It might be a good idea for the Commissioners to meet on-site and see what is being talked about. He would like to see a deferral. This is an emotional issue. There is a fear of things we don't understand. There are zoning issues.

LeFevre noted that DSN also has programs other than for the developmentally disabled. They also serve at risk youth with enhanced treatment group homes.

Carlson inquired as to how many different classifications of people there are to put people of like minded disabilities together. LeFevre replied that there is no classification. It depends on the diagnosis. Say there is a deaf person who can go in a home with other deaf people. It saves on having one staff person for all instead of one for each person.

Carlson understands there is a benefit to putting certain people together. He wanted to know how many types of homes there are. LeFevre noted that some diagnoses have similar characteristics or needs. There is a multitude of classifications.

Carlson understands overall that the ratio of staff to client does not increase. Each person has individual needs that they bring with them. LeFevre once again noted that HHS calculates its economics on four individuals per home.

Opposition

**1. Stephanie Siemsen**, 1700 Timber Ridge Road, testified in opposition. She moved into the neighborhood six years ago. 1720 Timber Ridge Road is a group home and there have been occasional disturbances. She is concerned with having two group homes in such a close span. There have been two missing persons from the one group home in the past year. She does not want the missing individuals to end up in her home or school. She has had persons from the group home come up to her house, into her garage, and approach her children. She doesn't know how these people can be controlled if the ones that are there know they cannot be controlled. She is not aware of a community liaison. She is on the board of the Timber Ridge Homeowners Association and she has never been contacted by anyone. The people she has talked to have not been very supportive. She submitted a petition of signatures against this group home. She doesn't have a problem with one home for the developmentally disabled, but she does have a problem with too many too close together.

**2. Jodi Zmiewski**, 1700 SW. 33<sup>rd</sup> Street, testified in opposition. She presently serves on the Timber Ridge Homeowners Association. She does not have an issue with having a group home in the neighborhood, but she does have an issue with there being two group homes two blocks apart. She questions what DSN does and doesn't do. DSN attempts to portray these people as normal people with disabilities, but she disagrees. They are special people with special needs. By their own admission, DSN is servicing some of the most behaviorally challenged people. She is concerned that this action will allow them to put in more and more group homes. One advantage of this neighborhood is affordable housing. As they began to experience problems in their neighborhood, the Lincoln Police Department became overwhelmed with the situation. They began to notice a slower response time. The neighborhood then felt the need to talk to DSN and they met and established a plan; however, DSN did not make contact with the homeowners association when they sought this request.

**3. Rose Linnertz**, 1731 Timber Ridge Road, testified in opposition. She has been in her home less than one year. She is concerned that a precedent is being set. Who's to say a third and fourth group home can't be put in her neighborhood? She is personally concerned with her safety. She does not know the status of the people living in this group home. She believes more research needs to be done on these issues. She wonders how many residents can be put in this home. Can they come back and ask for five? She is concerned with the poor management. She knows there are other residents in her neighborhood that would have liked to attend this meeting to express their concern.

**4. Mike Morosin**, past president of the Malone Neighborhood Association, expressed concern about this location. A precedent is being set. This is a dynamic change. We want to make sure the staffing is in place.

Response by the Applicant

LeFevre confirmed that this is a request to add only one more person to this specific location. Mr. Kanter attended the neighborhood association meeting. To his knowledge, there have not been any specific incidents. A missing person report is governed by the individual program plan. These are not lock down facilities. If someone elopes, one staff person leaves to go find the person who left and one is left at the home. Depending on the person and their disabilities and how long they are gone, sometimes the police are called.

**Colby Coash**, 829 Mary Court, testified that he works with training and staff development for DSN. He trains employees on the aspects of their jobs. From a development standpoint, the perception people have of people with disabilities is very different. He is here to answer questions the Commissioners may have on staff development. He has heard people say there is risk in setting precedent. He also sees great potential. Lincoln has the ability to say that people with disabilities can choose to live where they want to live.

**ACTION BY PLANNING COMMISSION:**

October 26, 2005

Esseks moved deferral for 4 weeks, seconded by Larson.

Rick Peo of the City Law Department advised that the City only has 45 days to act on the application unless it is the applicant's request to defer.

Esseks withdrew his motion.

Sunderman moved denial, seconded by Pearson.

Sunderman agreed that this is an emotional issue.

Taylor commented that he appreciates the very articulate points from the applicant. People don't understand things that are different. Calling these people violent offends him.

Larson will vote for denial, but he stressed that his vote to deny is nothing against DSN or its customers. He is just not comfortable voting for approval.

Carlson pointed out that developmentally disabled citizens are still citizens of the community. Three unrelated persons can live anywhere in this community that they choose. They are also afforded special consideration. They can live in a group home if they meet certain considerations. They are equally important members of this community. He believes that the determination today is being made on the thresholds and triggers in the zoning standard. It appears that this is the beginning of putting like needs together, but it is not clear to him that it is economically necessary to add a fourth person at this location.

Motion for denial carried 7-1: Pearson, Carroll, Krieser, Sunderman, Esseks, Larson and Carlson voting 'yes'; Taylor voting 'no'; Strand absent. This is a recommendation to the City Council.

**MISCELLANEOUS NO. 05019**

**REQUEST FOR "REASONABLE ACCOMMODATION"**

**AT 5516 HUNTS DRIVE.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**      October 26, 2005

Members present: Pearson, Carroll, Krieser, Sunderman, Esseks, Larson and Carlson; Strand and Taylor absent.

Staff recommendation: Approval

Ex Parte Communications: None.

Additional information submitted for the record: The same e-mail submitted on Miscellaneous No. 05017 from Dick Esseks to the Planning Commission concerning police calls at the specific addresses requesting "reasonable accommodation" also applies to this application.

Proponents

**1. Scott LeFevre** testified on behalf of **DSN**. There is an opinion which has been issued by HUD and the Department of Justice which asserts that the spacing/separation requirements for group homes generally violate the Fair Housing Act. This request does not ask for anything more than to add one person. LeFevre believes that this request is reasonable. This is a five-bedroom home. They would like to serve a fourth person. LeFevre also noted that most separation requirements have been struck down across the country. He would like the Commissioners to consider the precedent that is being set by denying this.

Esseks doesn't believe the Commission is saying that four or five people is inappropriate. He just hasn't seen a strong enough set of arguments to grant the accommodation. He would urge the applicant to present more economic information and work within the code.

There was no testimony in opposition.

**ACTION BY PLANNING COMMISSION:**

October 26, 2005

Larson moved denial, seconded by Carroll and carried 7-0: Pearson, Carroll, Krieser, Sunderman, Esseks, Larson and Carlson voting 'yes'; Strand and Taylor absent. This is a recommendation to the City Council.

\*\*\*\*\*

**MISCELLANEOUS NO. 05020**  
**REQUEST FOR “REASONABLE ACCOMMODATION”**  
**AT 416 N. CODDINGTON AVENUE.**

**APPLICATION WITHDRAWN BY THE APPLICANT**

\*\*\*\*\*

**2030 LINCOLN-LANCASTER COUNTY COMPREHENSIVE PLAN:**  
**DRAFT FUTURE LAND USE MAP**  
**AND URBAN GROWTH TIER MAP.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 26, 2005

Members present: Pearson, Carroll, Krieser, Sunderman, Larson and Carlson; Esseks, Strand and Taylor absent.

Steve Henrichsen of the Planning staff explained that these proposed maps were presented to the Planning Commission at a noon briefing a few weeks ago. There have been a few amendments as a result of conversations with a few developers over the past few weeks. There are no amendments to the Growth Tier map. The main purpose of the 2030 draft Land Use Map is for transportation planning purposes. The land uses are assigned and divided up by traffic zones and the types of road needs are explored. This map does not formally amend the Comprehensive Plan at this point.

Henrichsen then explained the specific amendments that are being requested.

1. Michael Rierden submitted a request on behalf of Lincoln Federal for an amendment for 20 acres approximately ½ mile south of Yankee Hill, east of 40<sup>th</sup> St. He thinks this area merits a neighborhood retail center. We should look at the area along S. 40<sup>th</sup> to the South Beltway.
2. Northwest corner of Interstate 80 and Hwy. 77. 30 acres has previously been shown on this corner. The developer agreed to show 120 acres. He thinks it is important to take a look at this corner in terms of transportation planning aspects. This would be for more industrial and highway commercial.
3. Hwy. 77 and Warlick Blvd. On the land use map, almost all of the light industrial has been eliminated and handled separately in the Comprehensive Plan maps. On the draft map, this particular area has been left in because they are in negotiation with the developer regarding Southwest Village which will be before the Planning Commission in a few weeks. Today the area is light industrial. Retail would be on the north side with some small areas of highway commercial. There is a lot of green space shown.

4. South 40<sup>th</sup> St., south to the South Beltway. Henrichsen attended a meeting last night that would start a subarea plan for this area. Kent Seacrest is working on updating the subarea plan for this area. The draft Land Use Map will be awaiting the results of the transportation modeling. They would include the amendment of South 27<sup>th</sup> going into the South Beltway. Currently, the northeast corner is shown as industrial and would be moved a little east. Employment will still be provided in the area. This will be about 50 acres. There is a treed buffer between the industrial and possible future residential to the east.

5. Carrie Campbell is proposing to add approximately 20 acres of neighborhood commercial on the northwest corner of 70<sup>th</sup> St. and Yankee Hill Rd. The first phase of Village Gardens is to the north, which has already been approved. There is a possible LPS school site nearby to the west. They are proposing additional residential development and would like to have a mixed use development with office and retail. This would be to show 20 acres of commercial for transportation modeling.

Henrichsen noted that the staff is requesting that all five amendments be included on the draft Land Use Map for purposes of studying the transportation modeling.

Pearson inquired where it would be appropriate to show large industrial uses. Henrichsen suggested that the draft Land Use Map includes many large sites for industrial. There are 800 acres shown in the Airport West subarea plan; there are 80 acres shown up north, along with the area added by Novartis.

#### Public testimony

**1. Mark Hunzeker** appeared on behalf of **Developments Unlimited**. He concurs with the changes being proposed at I-80 and Hwy. 77. There will be a more specific version of the amendment coming forward.

On behalf of **Overland LLC**, the contract purchaser of property at the West Bypass and 27<sup>th</sup> Street, Hunzeker concurred with the changes being proposed. It seems clear that 27<sup>th</sup> Street and the South Bypass is the most obvious location for retail and expansion to the east for more commercial makes sense.

**2. Mike Rierden** appeared on behalf of **Lincoln Federal Savings Bank**, and concurred with Henrichsen's proposed amendments. Higher density residential is being considered. This is a good fit for the area.

**ACTION BY PLANNING COMMISSION:**

October 26, 2005

Larson moved to approve the staff recommendation, as amended today, seconded by Carroll and carried 6-0: Pearson, Carroll, Krieser, Sunderman, Larson and Carlson voting 'yes'; Esseks, Strand and Taylor absent.

There being no further business, the meeting was adjourned at 6:15 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on November 9, 2005.

F:\FILES\PLANNING\PC\MINUTES\2005\pcm1026.05.wpd